

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HOWARD BERRY and DAVID BERRY,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

TRANSDEV SERVICES, INC. f/k/a VEOLIA  
TRANSPORTATION SERVICES, INC.;  
TRANSDEV NORTH AMERICA, INC., f/k/a  
VEOLIA SERVICES, INC.; and FIRST  
TRANSIT, INC.,

Defendants.

Case No.: 2:15-cv-01299-RAJ

**DECLARATION OF BREANNE  
MARTELL IN SUPPORT OF FIRST  
TRANSIT'S MOTION FOR  
PROTECTIVE ORDER**

I, Breanne Martell, declare as follows:

1. I am an attorney at Littler Mendelson, P.C., counsel for Defendant First Transit, Inc. I am over eighteen years of age and have personal knowledge of the information stated herein.

2. On November 18, 2016, I held a telephone conference with Plaintiffs' counsel, Toby Marshall, Jeffrey Needle, and Erika Nusser, to discuss the substantive grounds for First Transit's motion for protective order and motion to relieve First Transit from the current case schedule. Plaintiffs' counsel was agreeable to an extension of the case schedule, but did not agree to stay discovery as to First Transit until its pending Motions to Dismiss are decided.

**MARTELL DECL. ISO FIRST TRANSIT'S  
MOTION FOR PROTECTIVE ORDER - 1  
Case No.: 2:15-cv-01299-RAJ**

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1 Plaintiffs' counsel expressed that they did not want to delay the case and that discovery would be  
2 needed from First Transit regardless of whether it is a party. I explained that, if First Transit's  
3 Motions to Dismiss are granted and First Transit is dismissed as a party, then the provisions of  
4 Federal Rule of Civil Procedure 45 will apply, including the Rule's cost-shifting provisions, and  
5 First Transit believes this will affect the scope of discovery given the substantial cost and burden  
6 of the discovery that Plaintiffs are requesting. Plaintiffs' counsel acknowledged that this was a  
7 fair point, but believed that discovery should proceed to avoid further delays. The parties were  
8 unable to agree on a potential resolution short of First Transit filing the Motion.

9 3. On November 16, 2016, I held a telephone conference with Transdev's counsel,  
10 Anthony Todaro and Austin Rainwater, to discuss the parties' positions on the current case  
11 schedule and First Transit's intended motion for protective order. Transdev was agreeable to an  
12 extension of the case schedule, but expressed no opinion regarding First Transit's request to stay  
13 discovery as to First Transit.

14 4. While Plaintiffs and Transdev suggest that the parties should agree to a new case  
15 schedule at this time, First Transit believes it makes more sense to address the case schedule  
16 again after it is determined whether First Transit will remain a party.

17 5. Attached as **Exhibit A** is a true and correct copy of the third-party subpoena that  
18 Plaintiffs served on First Transit on or about March 18, 2016.

19 6. Attached as **Exhibit B** is a true and correct copy of the objections to Plaintiffs'  
20 third-party subpoena that First Transit served on or about April 4, 2016.

21 7. On May 13, 2016, Plaintiffs requested to meet and confer, and the parties held a  
22 telephone conference on May 23, 2016 to discuss Plaintiffs' requests. Attached as **Exhibit C** is  
23 First Transit's email to Plaintiffs summarizing this conference.

24 8. On June 29, 2016, First Transit produced requested contract and policy  
25 documents. Attached as **Exhibit D** is First Transit's email to Plaintiffs with this production, and  
26 additional explanations regarding electronically stored information that the parties had discussed.

1           9.       Plaintiffs did not attempt to confer further about the third-party subpoena, and did  
2 not file a motion to compel.

3           10.      On or about October 20, 2016, Plaintiffs mailed their First Set of Interrogatories  
4 and Requests for Production to First Transit, which consist of 15 Interrogatories and 34 Requests  
5 for Production. Attached as **Exhibit E** is a true and correct copy of Plaintiffs' First Set of  
6 Interrogatories and Requests for Production to First Transit.

7           11.      Based on communications with Transdev's counsel, it is our understanding that  
8 the data First Transit provided to King County on or about May 24, 2016 was subsequently  
9 provided to Transdev by King County for purposes of this lawsuit.

10          12.      With respect to the TRAPEZE data requested by Plaintiffs, the cost to produce it  
11 would depend on the requirements that are developed. Below is an estimate, which is subject to  
12 revision once the requirements for the project are developed:

13           (a)     I have been provided a rough estimate that it could take 100 to 500 hours for an  
14 outside vendor to provide the data in the requested format (if that is even  
15 possible), at a cost of \$25,000 to \$125,000.

16           (b)     The attorney time that will be required to produce the TRAPEZE data will also be  
17 substantial because of the need to work with First Transit to understand the  
18 database, confer with Plaintiffs about the requirements, advise First Transit about  
19 its obligations with respect to producing the data, and review data subsets. A  
20 rough estimate of the attorney time required is 50 to 100 hours, at a cost of  
21 \$16,750 to \$33,500.

22           (c)     Thus, the TRAPEZE discovery would likely incur costs ranging from at least  
23 \$41,750 to \$158,500, in addition to the \$10,000 already expended by First Transit  
24 to provide the data to King County (not including attorneys' fees).  
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1           13. First Transit has identified at least fifteen custodians who may have relevant email  
2 communications. I provided a list of these individuals to Kevin Hurd at First Transit to  
3 investigate the size of their mailboxes.

4           14. The parties have not discussed search terms for the email communications, but  
5 given the breadth of these requests, First Transit anticipates that search terms will return a  
6 significant number of results. For example, Plaintiffs seek all communications not only about  
7 driver rest breaks but communications about control center operations, driver scheduling, and  
8 customer complaints—essentially everything that First Transit does under its contract with King  
9 County. These broad searches are expected to return tens of thousands, if not hundreds of  
10 thousands, of documents. Based on my experience managing large-scale ESI review in class  
11 actions, I provide a rough estimate of the effort and costs below:

- 12           (a) Outsourcing review of the emails for responsiveness and privilege to a third-party  
13 vendor, which is generally the least expensive alternative for large-scale  
14 document review, would incur costs of at least \$1.00 per document.
- 15           (b) The cost of processing (\$200/GB) and hosting (\$18/GB/month for 6 months) this  
16 data would be approximately \$7,392.
- 17           (c) Attorney time would also be required to confer with Plaintiffs about search terms,  
18 supervise and train the document review team, and conduct quality control.
- 19           (d) Additional costs would be incurred in creating the document productions and  
20 privilege logs.
- 21           (e) Thus, I estimate that the email discovery would likely incur costs of at least  
22 \$100,000, and could be substantially more depending on the search terms and  
23 results.
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Executed at Seattle, Washington, this 21st day of November, 2016.  
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5  
6 s/ Breanne Martell  
Breanne Martell, WSBA #39632  
7 [bsmartell@littler.com](mailto:bsmartell@littler.com)  
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**CERTIFICATE OF SERVICE**

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is One Union Square, 600 University Street, Ste. 3200, Seattle, WA 98101. On November 21, 2016, I

<input checked="" type="checkbox"/>	<b>ELECTRONICALLY FILED</b> the foregoing document(s) with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:	
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on November 21, 2016, at Seattle, Washington.

s/ Sally Swearinger  
 Sally Swearinger  
[sswearinger@littler.com](mailto:sswearinger@littler.com)

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